394

THE FIRST SCHEDULE.

(See Section 3).

Implied Conditions of Arbitration Agreements.

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.

2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.

3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.

6. The parties to the reference and all persons claiming under them shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents, within their possession or power respectively, which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

7. The award shall be final and binding on the parties and persons claiming under them respectively.

8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

THE SECOND SCHEDULE.

(See Section 41).

Powers of Court.

1. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.

2. Securing amount in difference in the reference.

3. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession

of any party to the reference, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

4. Interim injunctions or the appointment of a receiver.

5. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

THE THIRD SCHEDULE.

[*See Section 49 (1)*].

Enactments Repealed.

Year	No.	Short title	Extent of repeal
1917	I.	The Mysore Arbitration Act, 1917.	The whole.
1911 ...	III.	The Code of Civil Procedure, 1911.	Section 89, clauses (a) to (f) (both inclusive) of sub-section (1) of section 104 and the Second Schedule.
1940 ...	X.	The Arbitration Act, 1940, as applied to the Retroceded Area by the Retroceded Area (Application of Laws) Act, 1948.	The whole.

THE FOURTH SCHEDULE.

[*See Section 49 (2)*].

Enactments Amended.

Year	No.	Short title	Amendments
1877 ...	I.	The Specific Relief Act, 1877.	In section 21— (i) for the words and figures "Code of Civil Procedure" the words and figures "Mysore Arbitration Act, 194 " shall be substituted. (ii) after the words "but if any person who has made such a contract" the words "other than an arbitration agreement to which the provisions of the said Act apply " shall be inserted.

396

Year	No.	Short title	Amendments
1911 ..	IV.	The Mysore Limitation Act, 1911.	In the First Schedule— (i) for Article 156 the following shall be substituted, namely:— "158. Under the Mysore Arbitration Act, 194 , to set aside an award or to get an award remitted for reconsideration." — Thirty days. — The date of service of the notice of filing of the award." (ii) in article 159 for the words "same Code" in the first column the words and figure "Code of Civil Procedure, 1911" shall be substituted. (iii) for Article 178 the following shall be substituted, namely:— "178. Under the Mysore Arbitration Act, 194 for the filing in Court of an award. — Ninety days. — The date of service of the notice of the making of the award."
1938 ...	XVIII.	The Mysore Companies Act, 1938.	In section 152— (i) for the figure "1917" in both places where it occurs, the figure "194 " shall be substituted. (ii) in sub-section (3) the words "other than those restricting the application of the Act in respect of the subject-matter of the arbitration" shall be omitted.
1944 ...	XXXVI	The Mysore Electricity Act, 1944.	In section 37, for the figure "1917" the figure "194 " shall be substituted.

397

Statement of Objects and Reasons.

The Law of Arbitration in Mysore is at present substantially contained in two enactments, *viz.*, the Mysore Arbitration Act, (I of 1917), which is based on the Indian Arbitration Act, 1899, and the second schedule to the Code of Civil Procedure, (III of 1911), which is based on the corresponding Indian Code of Civil Procedure, 1908. The operation of the 1917 Act is limited to such areas as it may be extended by Government in that behalf, and its scope is also confined to "Arbitration by agreement without the intervention of a Court of Justice." The second schedule to the Code of Civil Procedure deals with arbitrations outside the operation and scope of the 1917 Act. It relates for the most part to arbitration in suits though arbitration without intervention of a court is also briefly provided for. This schedule also contains an alternative method whereby the parties to a dispute or any of them may file their arbitration agreement before a court which after certain procedure refers the matter to an arbitrator.

The question of amending and consolidating the Law of Arbitration in India is not new. The Civil Justice Committee in 1925 recommended several changes in the Arbitration Law. The Central Act of 1899 was based largely on the then English Law to which several substantial amendments have been effected by an amending Act of Parliament in 1934. In 1938, the Central Government placed an officer on special duty to examine the question, and a Bill, which was the outcome of this examination, was passed into law as the Arbitration Act (X of 1940).

It is considered desirable to bring the law in Mysore on a level with that in India, and this Bill which closely follows the Indian Arbitration Act, 1940, has accordingly been brought forward.

Detailed explanations of the several clauses of the Bill are contained in the following notes on clauses.

Notes on Clauses.

Clauses 3, 4 and 5 reproduce with minor alterations the provisions of sections 6, 7 and 5 respectively of the 1917 Act, and deal with the terms of arbitration agreements.

Clauses 6 and 7 follow closely sections 1 and 2 of the Arbitration Act, 1934, (24 and 25 Geo. 5, C. 14): their purpose is to standardise the law as to the effect on an arbitration agreement and proceedings on the death or insolvency of a party thereto.

398

Clause 8 dealing with the Court's power to appoint an arbitrator in certain cases, reproduces with some verbal changes section 8 of the 1917 Act.

Clause 9 amends section 9 of the 1917 Act in the following directions: provision is made to suit mofussil conditions by making it clear that the defaulting party's time for appointing an arbitrator runs only from the receipt of notice, and the proviso is elaborated (*a*) to make it clear that it is only in the arbitrator's capacity as sole arbitrator (and not as the arbitrator of the party appointing him) that the Court may set aside the appointment, and (*b*) to permit the Court, on sufficient cause being shown, to allow further time to the defaulting party, or in any event to make such alternative order as it thinks fit.

Clause 10 makes provision for cases in which more than two arbitrators are appointed. The first two sub-clauses follow closely section 4 of the 1934 Act of Parliament.

Clause 11 empowers the Court to remove a dilatory arbitrator or umpire or one who misconducts himself or the proceedings. Section 16 of the 1917 Act and sections 6 and 15 of the 1934 Act of Parliament have been drawn on.

Clause 12, which follows section 3 of the 1934 Act of Parliament, makes provisions for the consequences of the removal of arbitrators (see also clause 36).

Clause 13 sets out the powers of arbitrators; it is based to some extent on section 10 of the 1917 Act and on paragraph 11 of the second schedule to the Code of Civil Procedure, 1911.

Clause 14 relating to the procedure in filling an award, reproduces section 11 of the 1917 Act with two small changes in sub-clause (2): the provision of paragraph 10 of the second schedule to the Code, requiring that depositions and documents shall accompany the award, is included, and the notice of filing is to be issued by Court and not by the arbitrator as in the 1917 Act.

Clause 15 dealing with the Court's powers to remit an award reproduces without change paragraph 12 of the second schedule to the Code.

Clause 16 deals with the Court's powers to remit an award for reconsideration. Sub-clause (1) repeats without change paragraph 14 of the second schedule to the Code, and the remaining sub-clauses reproduce the substance of the first sentence of paragraph 15(1) *ibid.*

Clause 17 follows with minor alterations paragraph 16 of the second schedule to the Code. Herein lies one of the substantial points of difference in the existing law: under the Code, judgment is entered in accordance with the award and a decree follows. Under the 1917 Act (following the then English law) an award is executable as a decree but is not a decree for all purposes. The 1934 Act of Parliament has changed the English law in this respect, and by this clause it is proposed to standardise the law in the direction of providing that judgment

399

shall be pronounced in the terms of the award and that a decree shall follow.

Clause 18. In following the Civil Procedure Code, clause 17 seeks to amend the existing law under the 1917 Act in another manner. At present under that Act an award is immediately enforceable as a decree. This position is at variance both with the Code and with the English law, and it is now proposed to make the decree only after the time for challenging the award has expired or when such a challenge if made has been rejected. This clause, taken from the English rules of Court, is a corollary to clause 17 in the sense that it enables the Court to counter in the interval any action designed to defeat the subsequent execution of the decree.

Clause 19 provides that where an award becomes void or is set aside, the Court may supersede the reference and order that the agreement shall cease to have effect with respect to the particular difference referred. The clause generalises the provisions of paragraph 15(2) of the second schedule to the Code.

Clause 20 is based upon paragraph 17 of the second schedule to the Code. It allows the parties to an arbitration agreement or any of them to initiate the reference proceedings with the assistance of the Court.

Clauses 21 to 23 reproduce substantially paragraphs 1 to 3 of the second schedule of the Code. They set out the initial steps to be taken for arbitration in a suit.

Clause 24 is a new provision. It is possible that some parties only to a suit may be agreeable to having the differences between them settled by arbitration. This clause will permit this to be done provided that those differences can be separated from the rest of the subject-matter of the suit.

Clause 25 applies with necessary modification certain other provisions of the Bill to arbitrations in suits.

Clause 27 is a new provision, based on the 1934 Act of Parliament, and conferring on arbitrators the power to make an interim award.

Clause 28.--Under the 1917 Act the arbitrators or umpire can themselves enlarge their time for making an award, though it seems that they must do so before the time actually expires. Under the Code it is the Court which has this power. The clause proposes that the power should in all cases vest in the Court only, who may extend the time whether the time has expired or not or whether the award has actually been made or not.

Clause 29 makes necessary provision as to interest.

Clause 30 follows paragraph 15 of the second schedule to the Code in setting out the grounds on which an award may be set aside.

Clause 31 deals with jurisdiction. It provides that all the matters relating to a single reference shall be before the same

Court, and that where there is a choice of forum, it shall be determined by the first application made to a Court in relation to a reference.

Clauses 32 and 33 provide that an arbitration agreement or award shall be contested only by application and not by suit. This proposal was made by the Civil Justice Committee and is in consonance with the general principle that the law of arbitration should provide simple, speedy and cheap settlement of differences.

Clause 34 deals with the staying of a suit where a reference concerning the subject-matter of the suit and between the same parties is pending. It continues the existing law contained in section 19 of the 1917 Act and paragraph 18 of the second schedule to the Code.

Clause 35 relates to the effect of subsequent legal proceedings on a pending reference. Such proceedings will not affect the reference unless (*a*) they relate to the whole of the referred matter and (*b*) all the parties to the reference are impleaded in the proceedings. Where these conditions are fulfilled, the legal proceedings will nullify the arbitration proceedings unless stay of legal proceedings is granted under clause 34.

Clause 36 is based on section 3(4) of the 1934 Act of Parliament, and supplies an omission in the present Indian Law. An agreement may contain a clause that no legal proceedings shall be taken on a certain matter unless the matter has first been made the subject-matter of an award. It is necessary to empower the Court to overrule this provision when the award is set aside or otherwise becomes void.

Clause 37 makes provision as to limitation in arbitration matters and follows closely section 16 of the 1934 Act of Parliament.

Clause 38 deals with disputes as to the arbitrator's fees and costs, and follows generally section 13 of the 1934 Act of Parliament and paragraph 13 of the second schedule to the Code. The Court may require the arbitrator to deliver up the award on the deposit into Court of the amount he claims, and may then investigate the claim and grant to the arbitrator such sum as fees as it thinks reasonable.

Clause 39 deals with appeals and replaces that part of section 104(1) of the Code of Civil Procedure, 1911, which this Bill seeks to repeal.

Clause 40 has the effect of providing that Small Cause Courts shall not deal with arbitrations other than arbitrations in suits before it.

Clause 41 and the second schedule deal with procedure. The clause confers generally the same powers as the Court enjoys under the Code Civil Procedure and with the schedule adds certain special powers in relation to arbitrations on the line of section 8(1) of the 1934 Act of Parliament.

Clause 42 makes provision for the service of notices under the Bill between parties or between arbitrator and parties.

Clause 43 follows paragraph 7 of the second schedule to the Code in requiring the Court to assist the arbitrator to enforce the production of evidence and empowering the Court to punish default or contempt before the arbitrators as if it were committed before the Court.

Clause 44 reproduces with small changes section 20 of the 1917 Act and empowers the High Court to make rules.

Clause 45 repeats section 22 of the 1917 Act and binds the Government.

Clause 46 applies with certain exceptions the provisions of the Bill to statutory arbitrations, and is based on section 20 of the 1934 Act of Parliament.

Clause 47 applies, subject to clause 46, the Bill to all arbitrations. The clause replaces section 89 of the Code of Civil Procedure, 1911, which this Bill repeals.

Clause 48 saves references pending at the commencement of this enactment: such references will continue to be governed by the existing law.

The First Schedule follows the First Schedule to the 1917 Act. The main differences are (*a*) arbitrators are required to appoint an umpire within a month of their own appointment, (*b*) the power to enlarge the time for making the award is transferred to the Court (cf. clause 28), and (*c*) item VII is omitted as redundant in view of clause 13(*a*).

The Third Schedule with clause 49(1) repeals the existing general arbitration law.

The Fourth Schedule makes certain consequential amendments of which those to the Limitation Act are the most important.